

Claims 1, 2, 4-9, 28, 29 and 31-36 stand rejected as anticipated by Katsuragi et al. (EP 07332064). In paragraph 12 of the Office Action on page 5, the Office Action sets forth five teachings of the reference and concludes that each material feature of the claimed invention is set forth in the reference. The rejection is hereby traversed and reconsideration is respectfully requested.

The first teaching stated in the Office Action attributed to Katsuragi et al. is that a bitterness-relieving agent "comprises" an ester and therefore would not exclude components other than the ester. The Office Action refers to page 3, line 3 and claim 1 of the reference.

The word "comprises" is an open ended term allowing the inclusion of other materials in addition to the stated components. When construed for purposes of infringement, if the infringing composition includes the stated components and another component then infringement will be found. However, for terms of what the reference fairly discloses as prior art, the word "comprises" does not teach any other component unless that component is specifically identified in the reference. Accordingly, the issue is not whether the reference uses the word "comprises" but whether, there is a teaching in the reference of the use of one or more partially hydrogenated vegetable oils or saturated fats in an amount of from about 0.5% to about 5.0% by weight of the composition which amount is effective to suppress the unpleasant mouthfeel of the botanical as required in the present claims. Thus, the word "comprises" does not independently provide any guidance to one of ordinary skill in the art as to whether the reference teaches the use of partially hydrogenated

oils or saturated fats. One must resort to the specific teaching of the reference specification for this purpose.

Before addressing this issue, it should be noted that the reference invention is the use of a reaction product as a bitterness-relieving agent. The reaction product is an ester. The ester is the reaction product of a mono- or diglyceride with a polycarboxylic acid or salt of the same.

The second alleged teaching of Katsuragi et al. is that the ester is formed by reacting the mono- or diglycerides and a triglyceride contained therein. This disclosure appears at page 3, lines 19-20. In particular, the reference states that mono- or diglyceride may be either a monoglyceride, a diglyceride or mixture thereof. Moreover, a triglyceride may be contained therein.

This statement means in the context of the reference that monoglycerides, diglycerides and mixtures thereof are the primary glyceride components which are then reacted with a polycarboxylic acid to form a bitterness relieving agent. To the extent that triglycerides are present, they too must be reacted with a polycarboxylic acid. This disclosure is not a teaching of a triglyceride alone. Indeed, the reference makes it clear that glycerides alone are not bitterness relieving agents as shown in Table 2 of the reference on page 7 in which monoglycerides and diglycerides alone were tested as comparative examples and found to have inferior results when compared to the bitterness-relieving agents of the invention (i.e. the reaction product of glycerides with a polycarboxylic acid). There is therefore no teaching or

suggestion in this portion of the reference that triglycerides (alone) are used as bitterness relieving agents. To the contrary, the reference teaches that to the extent that any triglycerides are present they are reacted with polycarboxylic acids to form an entirely different product.

Claim 1 of the present application, as indicated above, requires the presence of one or more partially hydrogenated vegetable oils or saturated fats. Chemically, fats or carboxylic esters are derived from a single alcohol (i.e. glycerol) and are referred to as glycerides. More specifically, they are triacylglycerols or triglycerides. Thus, the component (e.g. saturated fat) used in the claims may be a triglyceride but it is not the reaction product of a triglyceride with a polycarboxylic acid as taught in the reference.

Therefore, the second teaching referred to on page 5 of the Office Action attributed to Katsuragi et al. is not a teaching that triglycerides are used alone but only as the reaction product of a triglyceride with a polycarboxylic acid.

The third teaching set forth in the Office Action is that the ester may be present with not more than 80% of other components. This is a correct statement of the reference. However, the term "other components" does not include any stated bitterness-relieving agents. The only mention of other components is set forth at page 3, lines 40-44 wherein it is stated that "it" may further contain the unreacted polycarboxylic acids and mono- or diglycerides and polymerization products thereof. Thus, the only teaching in this section of the reference of "other components" is

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mono- and diglycerides and the polymerization products thereof with the polycarboxylic acids. There is no mention of triglycerides whatsoever. Accordingly, the third teaching of Katsuragi et al. as stated in the Office Action is that up to 80% of other components may be contained in the composition but those other components do not include triglycerides (fats).

The fourth teaching of Katsuragi et al. is that a bitterness-relieving agent may be dissolved in an edible oil. As has been previously explained, there is no disclosure in Katsuragi et al. of the amount of oil used to dissolve the bitterness-relieving agent and certainly there is no disclosure of an amount sufficient to remove unpleasant mouthfeel. The only example showing use of the edible oil is Example 11 which does not teach or suggest to anyone of ordinary skill in the art use of an edible oil as a bitterness-relieving agent or an amount sufficient to prevent unpleasant mouthfeel.

The final teaching of Katsuragi et al. set forth in the Office Action is that the bitterness-relieving agent is present in an amount of 0.1% by 10.0% by weight of the total weight of the composition and that based on this information and the information set forth in the third alleged teaching of the reference (i.e. the ester is present with not more than 80% of other components) the Office Action concludes that triglycerides may be present in an amount of 0.04-40% by weight of the medicinal composition. This assertion cannot stand because as has been shown

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above, the "other components" do not include triglycerides but rather may include the reaction product of triglycerides and polycarboxylic acids. These components are not partially hydrogenated oils and fats as required in the present claims.

It is therefore submitted that Katsuragi et al. does not teach or suggest the presently claimed invention and is insufficient to reject the claims under 35 U.S.C. Section 102 or 103.

Claims 1 and 4-7 stand rejected as anticipated by Sheu et al. (U.S. Patent No. 4,698,232). The Office Action states that the reference teaches a composition comprising an amorphous confectionery base with a botanical and includes hydrogenated palm oil for the purpose of suppressing unpleasant mouthfeel. The rejection is hereby traversed and reconsideration is respectfully requested.

The reference is directed to a fiber-containing confectionery composition which is soft in texture and smooth in mouthfeel. The composition contains a fiber composite which is formed by pretreating fiber particles with a coating of a fat and glycerin mixture (column 2, lines 19-21). The purpose of the reference is to provide a high fiber content confectionery composition. As indicated in column 1, beginning at line 3 the products of the reference invention have a consistency which can be described as having the textural characteristics commonly associated with "chewy gels" or "short nougats", yet having a high fiber content which is not organoleptically perceptible. Thus, the reference clearly teaches a composition which is not a hard boiled candy composition.

Further evidence is shown in column 2, beginning at line 52 where it is stated that the foamed matrix portion is similar in appearance and physical characteristics to the conventional frappe. It differs in its composition and choice of whipping agents. This is a clear teaching of a soft confectionery composition, not a hard boiled candy composition. Claim 1 of the present application requires a confectionery base comprised of a mixture of at least one sugar and at least one carbohydrate bulking agent which is kept in an amorphous or glassy condition. There is no teaching or suggestion in the reference of the employment of the fiber-containing composition within a hard boiled candy composition, the latter being required in the present claims. It is therefore submitted that Sheu et al. does not teach or suggest the presently claimed invention.

Claims 1, 4-9, 28 and 31-36 stand rejected as anticipated by Carpenter et al. (U.S. Patent No. 5,637,344). The Office Action states that the reference teaches making a hard boiled composition including cocoa powder which is alleged to be a botanical having an unpleasant mouthfeel. This characterization of the reference is incorrect.

While cocoa powder may be considered to have an unpleasant mouthfeel if untreated, it is clear that the reference provides particles of cocoa powder which do not have an unpleasant mouthfeel through the use of an air-jet milling process. As indicated in column 2, beginning at line 37, the chocolate flavored hard candy composition is prepared in part by air-jet milling cocoa powder under conditions

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sufficient to produce particles having an average size of less than about 15 microns and having generally rounded edges. As indicated beginning at column 3, line 3, the cocoa powder must have the proper geometry to eliminate unpleasant mouthfeel, which is achieved by the air-jet milling process. Because of the air-jet milling process, the cocoa powder does not have a rough texture and therefore does not have an unpleasant mouthfeel. Accordingly, there is no teaching or suggestion of eliminating unpleasant mouthfeel of botanicals through the use of partially hydrogenated oils or saturated fats. To the contrary, the reference teaches an entirely different way of dealing with the problem of unpleasant mouthfeel. It is therefore submitted that Carpenter does not teach or suggest the presently claimed invention.

Claims 3 and 30 stand rejected over the combination of Katsuragi and Raymont (AW 9671904). Raymont is stated to teach the conventionality of adding a botanical to lozengers/troches. The Office Action concludes that to include a botanical in Katsuragi et al. would have been obvious to one of ordinary skill in the art.

As previously indicated, Katsuragi et al. does not teach or suggest the presently claimed invention. In particular, Katsuragi et al. does not teach the use of partially hydrogenated oils or saturated fats for the purpose of eliminating unpleasant mouthfeel in a hard boiled candy composition containing a botanical. The citation of Raymont showing botanicals in edible compositions does not cure the deficiencies of the primary reference.

In view of the foregoing, Applicants submit that the present application is in condition for allowance and early passage to issue is therefore deemed proper and is respectfully requested.

It is believed that no fee is due in connection with this matter. However, if any fee is due, it should be charged to Deposit Account No. 23-0510.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allen R. Kipnes", written over the typed name.

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